

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #2	CCRB Case #: 201507848	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/11/2015 11:00 PM	Location of Incident: [REDACTED]	Precinct: 75	18 Mo. SOL 3/11/2017	EO SOL 3/11/2017	
Date/Time CV Reported Wed, 09/16/2015 2:13 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/16/2015 2:13 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. INS Michael Lipetri	00000	906647	075 PCT
3. LSA Michael Doyle	00000	917072	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Robert Mayer	18638	940441	075 PCT
2. POM Matthew Solomito	25805	951284	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LSA Michael Doyle	Force: Lt. Michael Doyle used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
B.INS Michael Lipetri	Discourtesy: Ins. Michael Lipetri spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
C. An officer	Force: An officer used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
D. An officer	Force: An officer used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
E.INS Michael Lipetri	Abuse: Ins. Michael Lipetri seized § 87(2)(b) [REDACTED] s property.	[REDACTED]

Case Summary

On September 16, 2015, § 87(2)(b) filed this complaint with the CCRB via telephone on behalf of herself and her sister, § 87(2)(b). On the same day, § 87(2)(b) filed a duplicate to the Internal Affairs Bureau, generating IAB log number 2015-27519. On September 18, 2015, IAB referred this case to the CCRB.

On September 11, 2015, at approximately 11:00 p.m., § 87(2)(b) and § 87(2)(b) were sitting with a group of neighbors outside of § 87(2)(b) in the § 87(2)(b) in Brooklyn when Ins. Michael Lipetri, Lt. Michael Doyle, and PO Robert Mayer approached and Ins. Lipetri told § 87(2)(b) to put her sound reproduction device away. The officers then began to speak to a group of males. These males vandalized the officers' RMP and § 87(2)(b) and § 87(2)(b) saw officers and civilians running across Linden Boulevard. § 87(2)(b) crossed Linden Boulevard while § 87(2)(b) remained at § 87(2)(b). § 87(2)(b) approached two arrestees and Lt. Doyle allegedly pushed her four times in her chest (**Allegation A**). § 87(2)(b) returned back across the street and Ins. Lipetri allegedly told his officers to seize her speaker and to, "Get them all off the fucking bench." (**Allegation B**). § 87(2)(b) refused to surrender the speaker and an officer pushed her (**Allegation C**) and § 87(2)(b) (**Allegation D**) and took the speaker (**Allegation E**). § 87(2)(b) and § 87(2)(b) went to the 75th Precinct stationhouse to retrieve the radio and § 87(2)(b) was issued a summons for disorderly conduct. The speaker was vouchered as arrest evidence and § 87(2)(b) is unable to retrieve it without the consent of the NYPD Legal Bureau.

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED]
- As of December 1, 2015, neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim in regards to this incident (Board Review 01).
- § 87(2)(b) and § 87(2)(b) do not have any prior criminal convictions.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint in which § 87(2)(b) and § 87(2)(b) are listed as participants (Board Review 02).
- Lt. Michael Doyle has been a member of the NYPD for 19 years and has 22 prior CCRB allegations involving 10 cases with 1 substantiated allegation.
 - In case number 201308582, a CCRB investigation determined that Lt. Doyle improperly entered a private residence. The Board recommended a penalty of command discipline and the NYPD imposed a penalty of formalized training.
 - Lt. Doyle has been the subject of Force – Physical Force allegations in case numbers 200512177 (unfounded), 201306090 (exonerated), 201308582 (exonerated), and 201503711 (unsubstantiated).
- Ins. Michael Lipetri has been a member of the NYPD for 21 years and has 21 prior CCRB allegations involving 13 cases with 1 substantiated allegation.

- In case number 200201651, a CCRB investigation determined that Ins. Lipetri spoke discourteously to an individual. The Board recommended charges and the NYPD imposed a penalty of Command Discipline – A.
- Ins. Lipetri has been the subject of Discourtesy – Word allegations in case numbers 200201651 (substantiated – see above) and 201503932, which is currently assigned to Panel 12B-2015 and is awaiting a final disposition from the Board.

Potential Issues

- There is no video footage in this case. § 87(2)(b) stated that some people filmed the incident, but she was unable to provide any names or contact information for these people and noted that the footage may have been deleted because it was too dark. In addition, Kevin Hurley of NYCHA stated that there are no VIPER cameras at the § 87(2)(b) and that there are no cameras at § 87(2)(b), which were the buildings closest to the incident location.

Findings and Recommendations

Explanation of Subject Officer Identification

- In her statement to the Internal Affairs Bureau (Board Review 03), § 87(2)(b) identified the officer that pushed her in Linden Boulevard as “PO Dole.” In her handwritten statement to the CCRB (Board Review 04), she identified this officer as “PO McDole,” and during her CCRB interview, she identified this officer as “PO MacDougal” or similar. The IAB Referral Log (Board Review 03) identified Lt. Michael Doyle as a possible subject officer, and Lt. Doyle acknowledged that he pushed some civilians in an attempt to control the crowd in Linden Boulevard. Given the phonetic similarity between Lt. Doyle’s name and the names provided by § 87(2)(b) and Lt. Doyle’s acknowledgement that he pushed some civilians, Allegation A is pleaded against Lt. Doyle.

Allegations Not Pleaded

- Witness § 87(2)(b) alleged that an officer told her to, “Mind [her] fucking business,” and, “Shut the fuck up,” after she asked the officer why § 87(2)(b)’s speaker was being seized. § 87(2)(b) declined to schedule an interview at the CCRB because she did not want to participate in this complaint. As such, § 87(2)(b) is not listed as a victim of any Discourtesy – Word allegations.
- § 87(2)(b) alleged that when Ins. Lipetri initially approached her, he said, “The party is over. Put that away or I’ll take it,” referring to her speaker. Seeing as Ins. Lipetri had legal grounds to seize the speaker and ultimately did so (see Allegation E), this threat of property seizure was a statement of fact. As such, an Abuse – Threat to Seize Property allegation is not pleaded against Ins. Lipetri.
- § 87(2)(b) and § 87(2)(b) alleged that when they went to the 75th Precinct stationhouse to retrieve her speaker, they observed that it no longer was standing upright as it was before it was seized. However, neither of them nor any of the witnesses observed the officers take any explicit action that would have damaged the speaker. Because § 87(2)(b) and § 87(2)(b) were unable to state how the damage to the speaker was sustained, no Abuse – Property Damaged allegation is pleaded.

Allegation A – Force: Lt. Michael Doyle used physical force against § 87(2)(b)

§ 87(2)(b) stated that she heard a loud “boom” noise and watched the arrests of numerous individuals take place in the middle of Linden Boulevard as she stood in the eastbound service road of Linden Boulevard. Numerous people that were present at the § 87(2)(b) § 87(2)(b) had gathered in Linden Boulevard to watch the arrests. § 87(2)(b) stood approximately five feet away from the arrestees and asked the officers why they were arresting them. Lt. Doyle immediately pushed § 87(2)(b) in the left side of her chest and then told her to get back. § 87(2)(b) stumbled approximately three feet back from the push but did not fall. § 87(2)(b) remained where she was standing because she was not in the officers’ way and Lt. Doyle ordered her to get back. Lt. Doyle continued to push § 87(2)(b) and allegedly pushed her a total of four times. § 87(2)(b) did not complain of any pain or injuries.

§ 87(2)(b) s friend § 87(2)(b) stated that § 87(2)(b) was an arm’s length away Lt. Doyle, who allegedly pushed § 87(2)(b) three times in her chest without asking her to move back. Approximately two minutes had passed in between each of these pushes. At the time, Lt. Doyle was telling everyone to move back and § 87(2)(b) complied. Lt. Doyle walked towards § 87(2)(b) as he pushed her. Lt. Doyle attempted to control the crowd and told everyone to back up and to go onto the sidewalk or back across the street.

§ 87(2)(b) s friend § 87(2)(b) and § 87(2)(b) did not see what happened with § 87(2)(b) across Linden Boulevard.

Lt. Doyle stated that after numerous commands were given to the crowd to vacate Linden Boulevard, some officers, including himself, began to push or place hands on people to get them onto the sidewalk and clear them out of Linden Boulevard. Lt. Doyle extended his asp and used it to push the crowd back (he demonstrated that he held the asp at each end and extended his arms forward horizontally), but did not strike anyone with the asp. Lt. Doyle did not recall making physical contact with § 87(2)(b) at any point. Lt. Doyle did not recall pushing § 87(2)(b) in her chest or observing any officer push § 87(2)(b) Lt. Doyle did not recall any officer making physical contact with § 87(2)(b) at any point.

Ins. Lipetri did not recall § 87(2)(b) being on Linden Boulevard. Ins. Lipetri did not recall using any force to contain the crowd or pushing anyone back himself. He observed some officers pushing people back, but did not recall whether Lt. Doyle was one of the officers. PO Mayer did not observe Lt. Doyle push anyone. When asked whether he observed § 87(2)(b) on the south side of Linden Boulevard, PO Mayer stated that the only moments he observed § 87(2)(b) were at § 87(2)(b) and at the 75th Precinct stationhouse. PO Mayer did not observe any officer push § 87(2)(b) on the south side of Linden Boulevard.

Patrol Guide Procedure 203-11 (Board Review 05) authorizes an officer to use the minimum amount of physical force necessary at the scene of a police encounter.

It is not in dispute that there was a large crowd gathered in the vehicular traffic lanes of Linden Boulevard, which is an eight-lane highway. This created an extremely dangerous situation, as someone in this crowd could have been struck by a passing vehicle. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B – Discourtesy: Ins. Michael Lipetri spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that as she was about to leave with her radio, she heard Ins. Lipetri tell his officers to, “Get them all off of the fucking bench.” § 87(2)(b) stated that Ins. Lipetri approached her and told her that she had to get off of the bench. § 87(2)(b) asked why she had to get off of the bench and Ins. Lipetri said he needed her to get off the bench right away for a short period and that he needed everyone to disperse. § 87(2)(b) noted that Ins. Lipetri was courteous. § 87(2)(b) and § 87(2)(b) made no mention of Ins. Lipetri using any profanities. Ins. Lipetri denied saying, “Get them all off of the fucking bench,” and using profanities at any point during this incident. Lt. Doyle and PO Mayer did not hear any other officer say, “Get them all off of the fucking bench,” and did not recall hearing any officer use any profanities. § 87(2)(g)

Allegation C – Force: An officer used physical force against § 87(2)(b)

Allegation D – Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b) stated that she heard Ins. Lipetri tell his officers to seize her speaker. At this point, there were approximately ten uniformed officers present. These officers arrived in marked vehicles. The officers approached § 87(2)(b) who held onto the handle of her speaker, which is approximately 3.5 feet tall and has wheels (Board Review 06). § 87(2)(b) refused to surrender her radio, asked why it was being taken, and held onto the handle. An officer then pushed § 87(2)(b) in her chest twice in order for her to let go of the radio. She then let go of the speaker. § 87(2)(b) told the officers not to push § 87(2)(b). The same officer then pushed § 87(2)(b) causing her to almost fall. § 87(2)(b) grabbed § 87(2)(b)'s arm and the officers then took the speaker away. § 87(2)(b) described this officer only as a white male in a blue uniform and noted that there were 20 to 30 officers at the scene. When asked whether she would be able to identify the subject officer from photographs of potential subjects, § 87(2)(b) stated that she would not be able to do so.

§ 87(2)(b) stated that as she was getting off of the bench, a white male officer in a blue uniform pushed her once in her right arm. This officer did not say anything to her or give her any commands before pushing her. § 87(2)(b) thought she was going to fall, but stumbled

backwards and sustained pain to her knee. Another white male officer in a blue uniform then grabbed § 87(2)(b) by the right arm. She asked this officer why he was grabbing her and pointed out that she was not doing anything and that she stood up as per the officers' orders. The officers then let her go and the officers told her that she had to leave while "shooing" her away. § 87(2)(b) turned and looked at § 87(2)(b) and saw an officer grab her, push her, and take her speaker. § 87(2)(b) was not sure whether § 87(2)(b) was pushed before or after the officer grabbed her. § 87(2)(b) described the officer that pushed § 87(2)(b) as a 5'9" to 5'10" white male officer in his 40s with a medium build. This officer may have been wearing a white uniform, but § 87(2)(b) was not sure of this. When asked whether she would be able to identify the subject officer from photographs of potential subjects, § 87(2)(b) stated that she would not be able to do so.

§ 87(2)(b) stated that § 87(2)(b) went to grab the speaker and officers in blue uniforms attempted to pull the radio away from her. § 87(2)(b) stated that Ins. Lipetri pushed § 87(2)(b) in her chest with the palm of his hand. The officers had already removed the radio from § 87(2)(b)'s grip two to three seconds prior to Ins. Lipetri pushing her. During this time, § 87(2)(b) was trying to get her radio back. § 87(2)(b) noted that § 87(2)(b) could not physically resist the radio being taken because Ins. Lipetri "snatched" it from her and she could not keep her grip on the radio. § 87(2)(b) stumbled, but § 87(2)(b) was standing right behind her, preventing her from falling. § 87(2)(b)'s sister (whom § 87(2)(b) referred to as § 87(2)(b) allegedly pushed Ins. Lipetri's hand in an attempt to prevent Ins. Lipetri's from pushing § 87(2)(b). Two to three seconds after Ins. Lipetri pushed § 87(2)(b) an officer pushed § 87(2)(b) in her hand or arm as she went to grab § 87(2)(b) to keep her from falling. § 87(2)(b) was unable to tell who this officer was. At the time, § 87(2)(b) was attempting to tell the officers that they could not seize § 87(2)(b)'s radio. § 87(2)(b) did not fall or stumble from this push.

Aside from when Lt. Doyle pushed § 87(2)(b) on the south side of Linden Boulevard, § 87(2)(b) did not observe any other officer make physical contact with § 87(2)(b) at any other point. § 87(2)(b) did not see any officer make physical contact with § 87(2)(b)'s sister.

Ins. Lipetri stated that § 87(2)(b) resisted the seizure of the speaker by grabbing onto it and pulling it back from him. Ins. Lipetri tugged the speaker back from § 87(2)(b). It took Ins. Lipetri "seconds" to take the speaker from § 87(2)(b). Ins. Lipetri did not recall pushing § 87(2)(b) when attempting to take her speaker and did not observe any other officer do so. When presented a photograph of § 87(2)(b) Ins. Lipetri stated that he did not recall § 87(2)(b) being present at § 87(2)(b). Ins. Lipetri noted that there was a female that was with § 87(2)(b) but he did not recall whether this was § 87(2)(b). Ins. Lipetri did not recall whether this female also held on to the speaker or if anyone else attempted to interfere with the seizure of the speaker. Ins. Lipetri did not recall pushing anyone when attempting to speaker and did not observe any other officer push anyone when attempting to seize the speaker.

Lt. Doyle was not sure which officer physically took possession of § 87(2)(b)'s speaker and did not observe the moment that this occurred. Lt. Doyle did not know whether § 87(2)(b) offered resistance in surrendering her speaker or how many officers were needed to remove the speaker from § 87(2)(b)'s possession. Lt. Doyle was not aware of

§ 87(2)(b) holding onto her speaker after an officer ordered her to surrender it. Lt. Doyle did not observe any officer push § 87(2)(b) and did not do so himself. When presented with a photograph of § 87(2)(b) Lt. Doyle stated that he was unable to say whether she was present at the scene. Lt. Doyle did not recall § 87(2)(b) or anyone else interfering with the seizure of the speaker. To Lt. Doyle's knowledge, no officer pushed § 87(2)(b) Lt. Doyle stated that he did not push § 87(2)(b)

PO Mayer stated that when Ins. Lipetri went to seize the speaker, § 87(2)(b) grabbed the speaker and they had a brief "pulling match" that lasted a few seconds. PO Mayer did not observe Ins. Lipetri make physical contact with § 87(2)(b) and did not do so himself at any point. PO Mayer did not observe Ins. Lipetri or any other officer push § 87(2)(b) and did not do so himself. When presented with a photograph of § 87(2)(b) PO Mayer stated that he did not recognize § 87(2)(b) as being present during the incident. PO Mayer did not observe any officer push § 87(2)(b) and did not do himself. PO Mayer stated that he did not make physical contact with any civilians aside from the arrestees.

Both § 87(2)(b) and § 87(2)(b) described the officers that pushed them as white males in blue uniforms with no further description. § 87(2)(b) described the officer that pushed § 87(2)(b) as a 5'9" to 5'10" white male officer in his 40s with a medium build and possibly a white uniform. When asked whether they would be able to identify the subject officer from photographs of potential subjects, both § 87(2)(b) and § 87(2)(b) stated that they would not be able to do so. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation E – Abuse of Authority: Ins. Michael Lipetri seized § 87(2)(b)'s property.

§ 87(2)(b) stated that Ins. Lipetri told her to put her speaker away or it would be taken away. According to § 87(2)(b) several of her neighbors were gathered around the speaker at the time and the speaker was already off. After spending some time on the south side of Linden Boulevard watching the arrests be effected, § 87(2)(b) returned to the speaker and was about to leave with it when she heard Ins. Lipetri tell his officers to seize her speaker. § 87(2)(b)'s speaker was ultimately seized and transported to the 75th Precinct stationhouse, where it was vouchered as arrest evidence (Board Review 07). At the stationhouse, § 87(2)(b) received a summons for disorderly conduct – unreasonable noise from PO Mayer (Board Review 08). PO Mayer issued her a summons at the stationhouse because he was unable to locate her when he was prepared to do so at the scene of the incident.

Ins. Lipetri stated that he heard "extremely loud and unreasonable" music coming from the speaker and noted that this music was unreasonable given the multi-dwelling residential location and the time. As Ins. Lipetri got closer to the group, he observed individuals drinking alcohol and alcohol bottles on the ground. In approaching the group, Ins. Lipetri intended to further investigate the disorderly group and to be proactive in suppressing violence. Ins. Lipetri explained that the § 87(2)(b) was known to him and his partners as being a problematic location due to numerous shootings and a "gang war" between certain factions within the development and against other crews within the 75th Precinct. Ins. Lipetri's officers have had

911 calls on dates prior for shots fired and disorderly groups at § 87(2)(b) Ins. Lipetri's officers have addressed groups gathered at this location in the past. Approximately two weeks prior to this incident, at a similar gathering two blocks away, nine individuals were shot. Ins. Lipetri then began to speak to § 87(2)(b) about the unreasonable noise, the hazardous condition, and the NYCHA rules and regulations regarding using electricity and extension cords. Ins. Lipetri ordered § 87(2)(b) to turn off the speaker and bring it inside. After the arrests on Linden Boulevard were effected, Ins. Lipetri observed individuals still gathered in the same area by § 87(2)(b) and observed the speaker in question still there with the extension cord still plugged into it. Ins. Lipetri did not recall whether § 87(2)(b)'s music was still playing or whether the speaker was still plugged into the outlet. Ins. Lipetri stated that the situation at § 87(2)(b) was still volatile. There were still approximately 15 to 20 individuals present, about half as many as were previously gathered by § 87(2)(b) who were not happy and refusing to listen to the officers' directions. Ins. Lipetri explained that he had decided to seize the speaker when he gave § 87(2)(b) the order to turn it off and bring it inside, but he was interrupted by the three individuals when they damaged his RMP. He decided to seize the speaker because § 87(2)(b) refused to cease playing music and put the speaker away, creating unreasonable noise and creating a hazardous condition with the extension cord. In addition, the speaker was evidence of the unreasonable noise being created. Ins. Lipetri gave the speaker to an officer to bring to the 75th Precinct. At the stationhouse, Ins. Lipetri made the decision to issue § 87(2)(b) the summons for unreasonable noise. This summons was in lieu of an arrest and an arrest evidence voucher would be prepared for the speaker. Ins. Lipetri stated that had § 87(2)(b) not received this summons, the speaker would have probably been vouchered as investigatory evidence or found property.

According to Lt. Doyle's memo book (Board Review 09), approximately 18 minutes had passed between when the officers arrived at the § 87(2)(b) and when the six arrests were effected in Linden Boulevard.

Patrol Guide Procedure 214-13 (Board Review 05) defines unreasonable noise as "any excessive or unusually loud sound that disturbs the peace, comfort or repose of a reasonable person of normal sensitivities, or injures or endangers the health or safety of a reasonable person of normal sensitivities, or which causes injury to plant or animal life, or damage to property or business." It states that officers must take into consideration several factors before seizing a sound reproduction device, including the character of the neighborhood or area, the ordinary noise level of the area, the time of day, the number of persons complaining about the noise, and whether the responsible party has been asked by others to cease or lower the sound level and has refused to do so. The officer must attempt to correct the condition by warning the violator before seizing the device.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

[Redacted text block]

Squad: 2

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date